

## REMARKS

Claims 32 and 38 are amended herein and new claims 43-45 are added. Claims 1-31 and 38-42 were identified in the Office Action as having been withdrawn from consideration and are labeled accordingly in the present Response. However, Applicant continues to traverse the restriction (and now, the apparent withdrawal) of claims 38-42. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Restriction Was Traversed:

In the Office Action dated September 7, 2006, a restriction requirement was imposed and five sets of claims were identified by the Examiner as being directed to distinct inventions relative to each other. In response, the Applicant provisionally elected, with traverse, the invention identified by the Examiner as invention IV (corresponding to claims 32-37). However, Applicant expressly traversed the restriction, at least with respect to the invention identified by the Examiner as invention V (corresponding to claims 38-42). In particular, remarks were submitted that explained that claims 38-42 recite a process of making a tubing that corresponds to the tubing recited in claims 32-37, respectively. For example, claim 32 recites “[a] tubing ... comprising at least one layer of copolyester ether (COPE) material selected to be suitably compatible with the media, wherein the at least one layer of COPE material comprises an outer layer defining an outer peripheral surface of the tubing.”

In comparison, claim 38 recites a process of making a tubing, comprising “selecting a copolyester ether (COPE) material that is suitably compatible with the media” and “forming a tubing having at least one layer of the selected copolyester ether (COPE) material, wherein the at least one layer of COPE material comprises an outer layer defining an outer peripheral surface of the tubing.

By the nature of the claims, the process of claim 38 could not be used to make a tubing other than the tubing recited in claim 32. Similarly, the tubing of claim 32 would be made according to the process of claim 38. In that regard, claims 32 and 38 are directed to common innovations and should be examined and classified together. Similar comments apply to each of

dependent claims 33 and 35-37, as compared to the dependent claims 39-42, respectively. Accordingly, the restriction between inventions identified by the Examiner as inventions IV and V was respectfully traversed.

In the Office Action dated January 3, 2007, the Examiner did not address or comment on the express traversal of the restriction as to Group V. Instead, the January 3, 2007 Office Action indicates on Form PTOL-326 that claims 1-31 and 38-42 are withdrawn from consideration, without further explanation. For reasons as expressed in the response to the restriction (filed October 6, 2006) and reiterated above, it is respectfully submitted that claims 38-42 should be included in the claims under consideration in the present application. Accordingly, those claims are included in the present amendment and claim 38 is amended in a manner similar to the amendment to claim 32 herein, although claims 38-42 are labeled as "Withdrawn" to be consistent with the Office Action. Applicant requests that the Examiner reconsider the restriction with respect to claims 38-42 and include those claims in consideration in the present application.

Objection To Claims 32-37:

Claims 32-37 are objected to as containing an informality with respect to the abbreviation COPE. The Examiner requested that the abbreviation be replaced with the full name, copolyester ether. In response, claim 32 (and claim 38) are amended to include the full name, followed by the abbreviation in a parenthetical. The dependent claims continue to refer to COPE by abbreviation, but, due to their dependency on an independent claim that expressly defines the abbreviation. Accordingly, it is respectfully submitted that the claims, as amended, are sufficiently definite and in compliance with 35 U.S.C. 112, second paragraph.

Rejection Under 35 U.S.C. 102(b):

Claims 32-34 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Mueller ('767). This rejection is respectfully traversed, in view of the claims as amended herein.

Claim 32 recites a tubing for conveying a fluidic media that is neither described nor suggested by Mueller. The tubing recited in claim 32 comprises "at least one layer of copolyester ether (COPE) material selected to be suitably compatible with the media, wherein the at least one

layer of COPE material comprises an outer layer defining an outer peripheral surface of the tubing.” (underlines added for emphasis). In contrast, Mueller describe a three-layer tubing in which the outer layer 22 is not a COPE material. In particular, Mueller describes an outer layer as follows:

“Outer layer 22 is a polypropylene, an ethylene propylene copolymer (EPC), or modified EPC. A suitable EPC is Eltex.TM. KS 409X6206 available from Solvay. This copolymer has an ethylene content of about 3.8%. A suitable modified EPC is a blend of ethylene propylene copolymer (e.g. Fina Z 9550 available from Fina), and styrene ethylene butylene styrene copolymer (e.g. Kraton 1652 available from Shell). Polyallomers can also be used, such as ethylene propylene block copolymer, available from Eastman as M7853-368A, having a melt flow index of about 12.” (Mueller, col. 3, ll. 22-31.)

As described in the present application (e.g., paragraph [0008]), with the use of a COPE outer layer, a multiple layer tubing may be made without polyvinylchloride (PVC) or PVC plasticizers. Because Mueller neither describes nor suggests a tubing, as claimed, having a COPE outer layer, Mueller does not anticipate claim 32, as amended herein. The rejection of claim 32 is, therefore, respectfully traversed.

Similar comments apply to claim 38, which is directed to a process of making a tubing having features as described above with respect to claim 32. Accordingly, claim 38 is also distinguished from the Mueller reference.

Claims 33-37 are each dependent (directly or indirectly) on claim 32 and, thus, are distinguished from the Mueller reference at least for reasons as discussed above with respect to claim 32.

In addition, claim 34 is further distinguished from the Mueller reference in that claim 34 recites that “the tubing consists essentially of no more than one layer of COPE material.” In contrast, Mueller describes multi-layer tubing embodiments, where each embodiment includes multiple (e.g., 3) layers of various materials. In one embodiment (Mueller, col. 4, ll. 26-34), an intermediate layer is composed of a “blend of EVA based polymeric adhesive and an elastomeric copolyester, where an example of the elastomeric copolyester is ECDEL 9965 from Eastman

Chemical. While the present application refers to ECDEL PCCE 9966 as an example of a COPE material, Mueller refers to ECDEL as a material in an “intermediate layer 24.” The “intermediate layer 24” necessarily is intermediate between two other layers (per Mueller’s description). Accordingly, Mueller requires at least 3 layers (2 or more having different materials) and, thus, does not predict, teach or suggest (and teaches away from) a tubing consists essentially of no more than one layer of COPE material, as recited in claim 34. Therefore, the rejection of claim 34 is further respectfully traversed.

In addition, claim 37 is further distinguished from the Mueller reference in that claim 34 recites that “the at least one layer of COPE material comprises a plurality of co-extruded layers of COPE material. In contrast, Mueller does not disclose or suggest “a plurality of layers of COPE material and, thus, does not disclose or suggest a plurality of co-extruded layers of COPE material. Furthermore, such would not have been a predictable result of Mueller, as Mueller does not contemplate plural intermediate layers.

The Examiner cites a portion of the Mueller reference (col. 4, ll. 35-45) that describes a 3-layer tubing, wherein only the intermediate layer includes an ECDEL elastomeric copolyester. While Mueller describes coextrusion (col. 4, l. 35), the 3 layers of Mueller’s tubing do not include multiple layers of COPE. Thus, a co-extrusion of Mueller’s tubing layers would not involve a coextrusion of multiple layers of COPE material. Accordingly, the rejection of claim 37 is further respectfully traversed.

Rejection Under 35 U.S.C. 103:

Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being anticipated by Mueller (‘767) in view of Karsten (‘394). This rejection is respectfully traversed, in view of the claims as amended herein.

Claims 35 and 36 are each dependent (directly or indirectly) on claim 32. As discussed above, claim 32 recites a tubing for conveying a fluidic media that is neither described nor suggested by Mueller. The tubing recited in claim 32 comprises “at least one layer of copolyester ether (COPE) material selected to be suitably compatible with the media, wherein the at least one layer of COPE material comprises an outer layer defining an outer peripheral surface of the

tubing.” (underlines added for emphasis). In contrast, Mueller describe a three-layer tubing in which the outer layer 22 is not a COPE material.

The Karsten reference does not address the above-noted distinction over the Mueller reference. Karsten also neither describes nor suggests a tubing having an outer layer of COPE material. While Karsten’s outer layer is a copolyester, Karsten does not appear to describe or suggest a COPE material for an outer layer. Accordingly, any combination of Karsten and Mueller, as suggested by the Examiner, would not result in the presently claimed invention. Therefore, neither Mueller nor Karsten, alone or in the combination suggested by the Examiner, would teach or suggest or render predictable the invention of claim 32 and, thus, of dependent claims 35 and 36. The rejection of claims 35 and 36 is, therefore, respectfully traversed.

Furthermore, claim 36 is further distinguished over the Mueller and Karsten references, in that claim 36 recites that the intermediate layer is between and bonded to two adjacent layers of COPE material. In contrast, Mueller’s layer that contains ECDEL material is Mueller’s intermediate layer (a direct opposite of the configuration of claim 36). Accordingly, any combination of Karsten and Mueller, as suggested by the Examiner, would not result in the invention recited in claim 36. The rejection of claim 36 is, therefore, further traversed.

#### New Claims:

New claims 43-45 are added, each of which are dependent on claim 32. Accordingly, new claims 43-45 are allowable over the references of record, at least for reasons as discussed above with respect to claim 32.

In addition, new claims 43-45 are further distinguished from the references of record. For example, new claim 43 recites that “the tubing is free of other layers other than the at least one layer of COPE.” As discussed above, Mueller describes a mutli-layer (3 layer) tubing having layers of different materials and, thus, does not describe or suggest and does not render predicable a tubing that is free of other layers other than at least one layer of COPE. Similarly, Karsten also describes a multi-layer (3-layer) tubing and, thus, does not describe or suggest and does not render predicable a tubing that is free of other layers other than at least one layer of COPE. Claim 43 is, therefore, further distinguished and patentable over the Mueller and Karsten

references. Appropriate support for the subject matter of new claim 43 is found in the original application, including, but not limited to, paragraph [0037].

New claim 44 is also further distinguished from the references of record, in that new claim 14 recites that the tubing comprises no more than one layer of COPE and is free of other layers other than the at least one layer of COPE. Because each of the Mueller and Karsten references describe multi-layer tubing structures, neither of those references, alone or in combination suggested by the Examiner, would teach or suggest or render predicable a tubing that has no more than one layer of COPE and is free of other layers other than the at least one layer of COPE. Claim 43 is, therefore, further distinguished and patentable over the Mueller and Karsten references. Appropriate support for the subject matter of new claim 44 is found in the original application, including, but not limited to, paragraph [0037].

New claim 45 is also further distinguished from the references of record, in that new claim 14 recites that the at least one layer of COPE comprises at least one layer of COPE that is substantially free of other materials. In contrast, the intermediate layer described by Mueller is composed of “a blend of an EVA-based polymeric adhesive and an elastomeric copolyester that may be ECDEL 9965. The EVA-based polymeric adhesive provides the adhering quality of the intermediate layer (to allow that layer to adhere to the inner and outer layers, per the function of Mueller’s intermediate layer). Accordingly, it would not have been predictable or suggested from the Mueller reference to employ a layer of COPE that is substantially free of other materials.

Accordingly, new claims 43-45 are further distinguished from and patentable over the references of record.

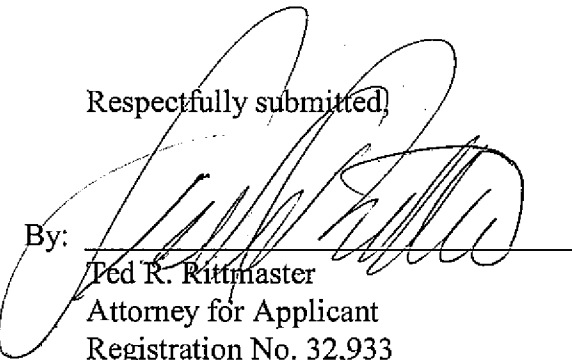
Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

Date: May 2, 2007  
FOLEY & LARDNER LLP  
Customer Number: 23392  
Telephone: (310) 975-7963  
Facsimile: (310) 557-8475

By:   
Ted R. Rittmaster  
Attorney for Applicant  
Registration No. 32,933